Supreme Court, U.S.
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No. 91-740

In The

Supreme Court of the United States

October Term, 1991

WALTER L. NIXON, JR.

Petitioner,

v.

UNITED STATES OF AMERICA, ET AL.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

JOINT APPENDIX

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37 pp

TABLE OF CONTENTS

1. Relevant Docket Entries in the Courts below 1a
2. Complaint of Walter L. Nixon, Jr., in the U.S. District Court for the District of Columbia 4a
3. Proceedings Before the United States Senate, November 3, 1989 . . . . . 12a

* The Opinion of the Court of Appeals below is reprinted as Appendix A to the Petition for Writ of Certiorari

APPENDIX A

RELEVANT DOCKET ENTRIES

Nixon v. United States, Civ. No. 89-3154
(U.S. District Court for the District
of Columbia)

DATE	DOCKET ENTRY
11/20/89	Complaint
01/19/90	Answer
01/22/90	Notice of Appearance of the United States Senate as Amicus Curiae
02/20/90	Plaintiff's Motion for Summary Judgment, with accompanying Memorandum in support
03/20/90	Memorandum of United States Senate as Amicus Curiae in support of Judgment for Defendants
03/22/90	Defendants' Motion for Judgment on the Pleadings or in the alternative for Summary Judgment, with accompanying Memorandum in support
04/05/90	Plaintiff's Reply Memorandum and Opposition to Defendants' Motion for Judgment on the Pleadings or for Summary Judgment
05/02/90	Memorandum of United States Senate as Amicus Curiae in Reply to Plaintiff's Opposition
05/03/90	Defendants' Reply Memorandum to Plaintiff's Opposition to Defendants' Motion for Judgment on the Pleadings or for Summary Judgment

06/21/90	Oral Argument on Plaintiff's Motion for Summary Judgment and Defendants' Motion for Judgment on the Pleadings or for Summary Judgment
08/10/90	Memorandum Opinion Denying Plaintiff's Motion for Summary Judgment and Granting Defendants' Motion to Dismiss
08/16/90	Notice of Appeal

RELEVANT DOCKET ENTRIES

Nixon v. United States, No. 90-5246
(U.S. Court of Appeals for the District of Columbia Circuit)

DATE	DOCKET ENTRY
09/27/90	Appellant's Statement of the Issues to be Raised on Appeal
12/17/90	Appellant's Brief and Joint Appendix
02/01/91	Appellees' Brief
02/22/91	Appellant's Reply Brief
03/14/91	Oral Argument
07/09/91	Opinion
07/31/91	Petition for Rehearing
08/05/91	Order Denying Petition for Rehearing

APPENDIX B

IN THE
UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

Civil Action No. 89-3154-LFO

WALTER L. NIXON, JR.,
1204 Iola Road
Ocean Springs, MS 39564
(601) 875-2082,

Plaintiff,

v.

UNITED STATES OF AMERICA,

JAMES E. BAKER, III,
United States Secretary of State,
2201 C Street, N.W.
Washington, D.C. 20520
(202) 647-4910, and

RALPH MECHAM, Director,
Administrative Office of the
United States Courts,
811 Vermont Avenue, N.W.
Washington, D.C. 20544
(202) 633-6197

Defendants.

COMPLAINT OF WALTER L. NIXON, JR. FOR DECLARATORY JUDGMENT

This action seeks a declaratory judgment that conviction by the United States Senate on impeachment articles may not constitutionally be reached on the basis of a trial before a committee of only twelve senators, and that plaintiff is entitled to payment of his salary and benefits as a United States District Judge from and after November 3, 1989, on which date the

Senate unconstitutionally entered a judgment of conviction against him on two impeachment articles.

JURISDICTION

1. This is an action for declaratory relief under 28 U.S.C. §§2201 and 2202. Jurisdiction over this action is conferred by 28 U.S.C. §1331 because the claims set forth arise under the Constitution.

VENUE

2. Venue is established in the District of Columbia under 28 U.S.C. §1391(b) because all of the defendants reside or have their official offices within the District of Columbia, and conduct their business within the District of Columbia.

PARTIES

3. Plaintiff Walter L. Nixon, Jr. was, until November 3, 1989, Chief Judge of the United States District Court for the Southern District of Mississippi, having been appointed by the President and confirmed by the Senate in 1968. He resides in Ocean Springs, Mississippi.

4. Defendant United States of America provided the general funds from which plaintiff Nixon's salary as a United States District Judge was paid. Plaintiff Nixon served defendant United States of America as a District Judge until removed from office by vote of the United States Senate on two Articles of Impeachment on November 3, 1989.

5. Defendant James E. Baker, III is the United States Secretary of State. Pursuant to Senate Impeachment Rule XXIII, any judgment of conviction in an impeachment case is deposited with his office.

6. Defendant Ralph Mecham is Director of the Administrative Office of the United States Courts, the agency

responsible for the provision of compensation and other benefits to plaintiff Nixon as a United States District Judge.

7. The individual defendants are sued only in their official capacities.

BACKGROUND

8. Under the Constitution, plaintiff Nixon could be removed from office only pursuant to impeachment as provided in Article II, Section 4 of the Constitution, upon a two-thirds vote by the Senate finding him guilty of "High Crimes or Misdemeanors."

9. Until 1986, all evidentiary hearings in impeachment cases were conducted on the floor of the Senate, in full view and hearing of the entire membership of the Senate. The full Senate received all testimony and evidence in an impeachment case.

10. On May 10, 1989, the House of Representatives adopted three Articles of Impeachment against plaintiff Nixon and appointed five congressmen to present those Articles to the Senate ("the House Managers").

11. The Articles of Impeachment alleged that Nixon intentionally made false statements to a grand jury and to federal officials in 1984. Nixon was convicted in 1986 in the Southern District of Mississippi on two counts asserting similar allegations, but continues to assert his innocence in every respect.

12. As in most perjury cases, the credibility of the witnesses in Nixon's case was particularly important. The Report of the Senate Committee that heard the evidence in Nixon's trial stated that the testimony was "dramatically inconsistent" and referred to "extensive contradictory evidence" before the Committee. One major prosecution witness recanted his former testimony against Nixon and said he gave false testimony in order to please the government. A second key prosecution

witness has admitted to giving false testimony under oath on numerous occasions.

13. On May 11, 1989, the Articles of Impeachment were exhibited in the Senate and the Senate adopted Senate Resolution 128, which, pursuant to Rule XI of the Senate Impeachment Rules, appointed a committee of twelve Senators [the "Nixon Committee"] "to receive and report evidence with respect to articles of impeachment against Judge Walter L. Nixon, Jr." The Nixon Committee was authorized to submit to the Senate a "certified copy of the transcript of the proceedings and testimony had and given before it," and also to "report to the Senate a statement of facts and a summary . . . of evidence that the parties have introduced on the contested issues of fact."

14. By Order dated July 25, 1989, the Nixon Committee denied Nixon's motion requesting that all evidentiary hearings be held before the full Senate. The Nixon Committee also denied all of Nixon's other pretrial motions.

15. The evidentiary hearings in the impeachment case were conducted before the Nixon Committee on September 7, 8, 11, and 12, 1989. A quorum of only seven Committee members was required for the Committee to receive evidence on each day, and ten witnesses gave live testimony. The Nixon Committee received a large volume of documentary materials as exhibits as well as the record of Judge Nixon's initial criminal trial, post-conviction proceedings, and the impeachment inquiry of the Subcommittee on Civil and Constitutional Rights and Liberties of the House Judiciary Committee. Also, extensive sworn written statements were introduced into the record.

16. Following the close of the evidentiary record, the Nixon Committee produced and distributed a Report which purported to summarize in a neutral manner the positions of the parties and the evidence before the Committee. By omitting

several passages of Nixon's prior testimony, the Committee Report inaccurately and misleadingly stated that Nixon's testimony before the Senate Committee "contrasted" with his testimony in earlier proceedings, a very serious conclusion in a perjury case in which credibility was the critical issue. This supposedly contrasting testimony related to Nixon's state of mind at the time he gave the supposedly false statements in 1984, and therefore was directly relevant to the Articles of Impeachment and was adverse to plaintiff.

17. After the Committee Report was prepared, the House Managers and plaintiff Nixon submitted closing briefs which were distributed to all members of the Senate. Nixon's closing brief was submitted on October 24, 1989, and renewed Nixon's motion for the trial to be conducted before the full Senate.

18. On November 1, 1989, the House Managers, plaintiff Nixon, and counsel for Nixon made closing arguments to the full Senate on the Senate floor. Following the summations, certain Senators submitted written questions to the President Pro Tempore, who addressed those questions to Nixon or the House Managers, as appropriate. The entire floor proceedings consumed less than four hours. No evidence was taken during the floor proceedings.

19. On November 2, 1989, the Senate met in executive session to deliberate on the impeachment articles and pending motions. The deliberations lasted for approximately six hours.

20. On November 3, 1989, the Senate met to vote on the impeachment articles. Before voting on those Articles, the Senate voted 92-7 to deny Nixon's motion for trial before the full Senate and voted 63-34 to deny Nixon's motion to dismiss Article III.

21. On the impeachment articles, the Senate voted as follows:

	Guilty	Not Guilty
Article I	89	8
Article II	78	19
Article III	57	40

On each Article of Impeachment, Nixon drew significantly greater support from those Senators who served on the Nixon Committee and thus heard the evidence and witnesses, than from those senators who did not serve on the Committee and thus did not hear the evidence:

	Committee Members Voting for Acquittal	Non-Committee Members Voting for Acquittal
Article I	3/12 (25%)	5/85 (6%)
Article II	5/12 (42%)	14/85 (16%)
Article III	6/12 (50%)	36/85 (42%)

22. Following the vote on the Articles of Impeachment, the President Pro Tempore announced a judgment of conviction on Articles I and II, and of acquittal on Article III. That judgment was recorded by the Secretary of the Senate, who deposited the judgment with defendant Baker.

23. Based on the Senate judgment, defendant Mecham, directly or through his agents, has ceased authorizing payment of plaintiff Nixon's salary or other benefits as a United States District Judge.

24. In June 1989, Nixon intervened in an action brought by Judge Alcee L. Hastings in the United States District Court for the District of Columbia. Although Judge Hastings raised a number of issues, Nixon presented only the constitutional claim stated in this Complaint.

25. On July 5, 1989, Judge Gesell dismissed Nixon's claim, finding the case non-justiciable. C.A. No. 89-1602.

26. On October 18, 1989, the United States Court of Appeals for the District of Columbia Circuit affirmed the District Court's dismissal on the sole ground "that considerations

of *ripeness* and vital comity concerns, fundamental to our federalist system and the balance of power our Constitution establishes, precludes judicial intervention *at this juncture*." No. 89-5191 (emphasis added). The Court of Appeals also noted that "we have reached no question going to the merits of [Nixon's] challenges."

CLAIM
(Article I, Section 3, Clause 6 Of The Constitution)

27. The Constitution provides that the Senate shall have "the sole Power to try all Impeachments," and that "when sitting for the Purpose, they be upon Oath or Affirmation."

28. The members of the Senate took an oath on May 11, 1989, to "do impartial justice according to the Constitution and laws" in the impeachment proceeding concerning Nixon. The one hundred members of the Senate were both judges and jurors in that proceeding.

29. Nevertheless, by Impeachment Rule XI and Resolution 128, the Senate delegated to the Nixon Committee the hearing of all evidentiary matters, thereby assuring that eighty-eight senators, or more than seven-eighths of that body, neither heard nor saw the witnesses during the trial and played no role in determining the procedures to be followed.

30. Because Impeachment Rule XI and Senate Resolution 128 thereby excluded more than seven-eighths of the Senate from hearing the witnesses and the evidence in this case, they were contrary to the direction in Article I, section 3, clause 6 of the Constitution that the Senate shall try all impeachments, and the judgments of conviction entered on Articles I and II were unconstitutional.

PRAYER FOR RELIEF

WHEREFORE, plaintiff Nixon requests that this Court enter judgment declaring:

i) that Senate Impeachment Rule XI and Resolution 128 are unconstitutional in that they denied Nixon a trial before the Senate, as provided in Article I, section 3, clause 6 of the Constitution, and thereby abrogate the Senate's constitutional responsibility to try all impeachments;

(ii) that the judgment of conviction entered by the Senate on November 3, 1989, based upon trial before only a committee of twelve Senators, is unconstitutional; and

(iii) that Nixon remains entitled to full pay and benefits as United States District Judge from November 3, 1989 forward.

Respectfully submitted,

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Date: November 20, 1989

APPENDIX C

SENATE VOTES ON THE ARTICLES OF IMPEACHMENT AGAINST JUDGE WALTER L. NIXON, JR.

(From the Congressional Record—Senate, November 3, 1989, *reprinted in* Proceedings of the United States Senate in the Impeachment Trial of Walter L. Nixon, Jr., S. Doc. No. 22, 101st Cong., 1st Sess. 427 (1989).)

[Quorum Call]

Mr. MITCHELL. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll and the following Senators entered the Chamber and answered to their names:

[Quorum No. 11]

Armstrong	Byrd	Kerrey
Boschwitz	Dixon	Kohl
Bryan	Dole	Mitchell
Bumpers	Hatfield	

The PRESIDENT pro tempore. A quorum is not present. The clerk will call the roll of the absentees.

Mr. MITCHELL. Mr. President, I move that the Sergeant at Arms be instructed to request the attendance of absent Senators and I ask for the yeas and nays.

The PRESIDENT pro tempore. Is the demand sustained? Obviously the demand is sustained.

The yeas and nays are ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Oklahoma [Mr. Boren] and the Senator from New Jersey [Mr. Bradley] are necessarily absent.

Mr. SIMPSON. I announce that the Senator from Arizona [Mr. McCain] is necessarily absent.

The PRESIDENT pro tempore. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 96, nays 1, as follows:

[Rollcall Vote No. 283 Leg.]

YEAS—96

Adams	Daschle	Helms
Armstrong	DeConcini	Hollings
Baucus	Dixon	Inouye
Bentsen	Dodd	Jeffords
Biden	Dole	Johnston
Bingaman	Domenici	Kassbaum
Bond	Durenberger	Kasten
Boschwitz	Exon	Kennedy
Breaux	Ford	Kerrey
Bryan	Fowler	Kerry
Bumpers	Garn	Kohl
Burdick	Glenn	Lautenberg
Burns	Gore	Leahy
Byrd	Gorton	Levin
Chafee	Graham	Lieberman
Coats	Gramm	Lott
Cochran	Grassley	Lugar
Cohen	Harkin	Mack
Conrad	Hatch	Matsunaga
Cranston	Hatfield	McClure
D'Amato	Heflin	McConnell
Danforth	Heinz	Metzenbaum

Mikulski	Reid	Simon
Mitchell	Riegle	Simpson
Moynihan	Robb	Specter
Murkowski	Rockefeller	Stevens
Nickles	Roth	Symms
Nunn	Rudman	Thurmond
Packwood	Sanford	Wallop
Pell	Sarbanes	Warner
Pressler	Sasser	Wilson
Pryor	Shelby	Wirth

NAYS—1

Humphrey

NOT VOTING—3

Boren	Bradley	McCain

So the motion was agreed to.

The PRESIDENT pro tempore. A quorum is present. There will be order in the Senate.

IMPEACHMENT OF JUDGE WALTER L. NIXON, JR.

The PRESIDENT pro tempore. Under the previous order, the hour of 10 a.m. having arrived and a quorum having been established, the Senate will resume its consideration of the articles of impeachment against Judge Walter L. Nixon, Jr. The managers on the part of the House and respondent and his party will now take their places in the well in the Chamber.

The Deputy Sergeant at Arms will make the proclamation.

The Deputy Sergeant at Arms, Jeanine Drysdale-Lowe, made proclamation as follows:

> Hear ye! Hear ye! Hear ye! All persons are commanded to keep silence, on pain of imprisonment, while the Senate of the United States is sitting for the

trial of the articles of impeachment exhibited by the House of Representatives against Walter L. Nixon, Jr., U.S. district judge for the Southern District of Mississippi.

The PRESIDENT pro tempore. The majority leader is recognized.

Mr. MITCHELL. Mr. President, if I may have the attention of my colleagues.

The PRESIDENT pro tempore. The Senate will be in order. The majority leader is recognized.

Mr. MITCHELL. Mr. President, we will this morning be voting on two motions and, depending upon the outcome of those motions, on three articles of impeachment. That means a maximum potential of five votes. In view of the importance of these proceedings, in the interest of fairness to all concerned and also in the interest of maintaining proper decorum in the Senate, I ask that Senators remain in their seats during the voting and respond when their name is called by the clerk. That will also have the added benefit of expediting the proceedings.

The first rollcall vote will, in accordance with our practices, be a 15-minute rollcall vote. The subsequent rollcall votes need only take such time as to permit each Senator to respond. Therefore, I urge Senators to remain in their seats during the voting and respond when their name is called by the clerk. That will also have the added benefit of expediting the proceedings.

Also, Mr. President, I ask unanimous consent that at any time in the proceeding which they choose, Judge Nixon and his counsel be permitted to excuse themselves.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. MITCHELL. So counsel and the judge know that at any time they wish, following the completion of the vote, they may excuse themselves at any time.

Mr. President, the Senate deliberated yesterday for 6 hours on the articles of impeachment against Judge Walter L. Nixon, Jr. We meet this morning to vote on Judge Nixon's two pending motions and, depending upon the disposition of those motions, on the three articles of impeachment.

JUDGE NIXON'S MOTION FOR TRIAL BY THE SENATE

The PRESIDENT pro tempore. The Senate will now proceed to vote on Judge Nixon's first motion. The clerk will read Judge Nixon's motion for trial by the Senate.

The assistant legislative clerk read as follows:

JUDGE NIXON'S MOTION FOR TRIAL BY THE SENATE

> Respondent Walter L. Nixon, Jr., through his undersigned attorneys, hereby moves that the Senate trial in this case be convened before and conducted in the presence of the entire body of the Senate, as required by article I, section 3, clause 6 of the Constitution, as set forth at greater length in the attached supporting Memorandum.

The PRESIDENT pro tempore. The majority leader is recognized.

Mr. MITCHELL. Mr. President, I ask for the yeas and nays.

The PRESIDENT pro tempore. Is the demand sustained? Obviously, the demand is sustained.

The yeas and nays were ordered.

VOTE ON JUDGE NIXON'S MOTION FOR TRIAL BY THE SENATE

The PRESIDENT pro tempore. A "yea" vote would be in favor of granting Judge Nixon's motion. A "nay" vote would be in opposition to granting Judge Nixon's motion. The clerk will call the roll and please repeat the responses.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Oklahoma [Mr. BOREN] and the Senator from New Jersey [Mr. Bradley] are necessarily absent.

I further announce that, if present and voting, the Senator from New Jersey [Mr. Bradley] would vote "nay."

Mr. SIMPSON. I announce that the Senator from Arizona [Mr. McCain] is necessarily absent.

The PRESIDENT pro tempore. Are there any Senators who have not voted?

The result was announced—yeas 7, nays 90, as follows:

[Rollcall Vote 284]

(Judge Nixon's motion for trial by the Senate—Court of Impeachment—Judge Walter L. Nixon, Jr.)

YEAS—7

Heflin	Packwood	Specter
Helms	Sanford	Wallop
Mack		

NAYS—90

Adams	Bingaman	Bumpers
Armstrong	Bond	Burdick
Baucus	Boschwitz	Burns
Bentsen	Breaux	Byrd
Biden	Bryan	Chafee

Coats	Hatch	Mitchell
Cochran	Hatfield	Moynihan
Cohen	Heinz	Murkowski
Conrad	Hollings	Nickles
Cranston	Humphrey	Nunn
D'Amato	Inouye	Pell
Danforth	Jeffords	Pressler
Daschle	Johnston	Pryor
DeConcini	Kassebaum	Reid
Dixon	Kasten	Riegle
Dodd	Kennedy	Robb
Dole	Kerrey	Rockefeller
Domenici	Kerry	Roth
Durenberger	Kohl	Rudman
Exon	Lautenberg	Sarbanes
Ford	Leahy	Sasser
Fowler	Levin	Shelby
Garn	Lieberman	Simon
Glenn	Lott	Simpson
Gore	Lugar	Stevens
Gorton	Matsunaga	Symms
Graham	McClure	Thurmond
Gramm	McConnell	Warner
Grassley	Metzenbaum	Wilson
Harkin	Mikulski	Wirth

ABSENT, NOT VOTING, OR EXCUSED FROM VOTING—3

Boren	Bradley	McCain

The PRESIDENT pro tempore. On this vote, there are 7 yeas, 90 nays. Judge Nixon's motion for trial by the Senate is denied.

JUDGE NIXON'S MOTION TO DISMISS IMPEACHMENT ARTICLE III

The PRESIDENT pro tempore. The clerk will now read Judge Nixon's motion to dismiss impeachment article III.

The legislative clerk read as follows:

> Judge Walter L. Nixon, Jr. through his undersigned counsel, hereby moves for an order of the Senate dismissing Impeachment Article III on the grounds stated:
>
> 1. The allegations that an impeachable offense has been made out if "Judge Nixon has raised substantial doubt as to his judicial integrity, undermined confidence in the integrity and impartiality of the judiciary, betrayed the trust of the people of the United States, * * * and brought disrepute on the Federal courts and the administration of justice by the Federal courts. * * *"
>
> These allegations do not make out an impeachable offense under Article II, sec. 4 of the Constitution.
>
> 2. Specifications III(2)(A), (D), (E), (F), and (G), which are redundant and multiplicitous of allegations in Impeachment Article I and Article II.
>
> 3. The Article, which charges five different offenses for each of fourteen specific events, thus present seventy allegations. Such a complex and confusing Article is both unfair and completely unworkable.

The PRESIDENT pro tempore. The majority leader is recognized.

Mr. MITCHELL. Mr. President, I ask for the yeas and nays.

The PRESIDENT pro tempore. Is the demand for the yeas and nays sustained? Obviously, the demand is sustained.

The yeas and nays were ordered.

VOTE ON JUDGE NIXON'S MOTION TO DISMISS IMPEACHMENT ARTICLE III

The PRESIDENT pro tempore. A yea vote would be in favor of granting Judge Nixon's motion. A nay vote would be in opposition to granting Judge Nixon's motion. The clerk will call the roll, and please repeat the response.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Oklahoma [Mr. Boren] and the Senator from New Jersey [Mr. Bradley] are necessarily absent.

I further announce that, if present and voting, the Senator from New Jersey [Mr. Bradley] would vote "nay."

Mr. SIMPSON. I announce that the Senator from Arizona [Mr. McCain] is necessarily absent.

The PRESIDENT pro tempore. Are there any Senators in the Chamber who have not voted or who wish to change their vote?

The result was announced—yeas 34, nays 63, as follows:

[Rollcall Vote No. 285]

(Judge Nixon's motion to dismiss impeachment article III—Court of Impeachment—Judge Walter L. Nixon, Jr.)

YEAS—34

Adams	Chafee	Exon
Biden	Conrad	Graham
Bingaman	Dixon	Hatch
Bryan	Dole	Hatfield
Burdick	Domenici	Heflin

Johnston	Mack	Sanford
Kasten	McClure	Sasser
Kerrey	Metzenbaum	Simon
Kerry	Moynihan	Symms
Kohl	Murkowski	Wallop
Levin	Pryor	
Lieberman	Reid	

NAYS—63

Armstrong	Glenn	Nickles
Baucus	Gore	Nunn
Bentsen	Gorton	Packwood
Bond	Gramm	Pell
Boschwitz	Grassley	Pressler
Breaux	Harkin	Riegle
Bumpers	Heinz	Robb
Burns	Helms	Rockefeller
Byrd	Hollings	Roth
Coats	Humphrey	Rudman
Cochran	Inouye	Sarbanes
Cohen	Jeffords	Shelby
Cranston	Kassebaum	Simpson
D'Amato	Kennedy	Specter
Danforth	Lautenberg	Stevens
Daschle	Leahy	Symms
DeConcini	Lott	Thurmond
Dodd	Lugar	Warner
Durenberger	Matsunaga	Wilson
Ford	McConnell	Wirth
Fowler	Mikulski	
Garn	Mitchell	

ABSENT, NOT VOTING, OR EXCUSED FROM VOTING—3

Boren	Bradley	McCain

The PRESIDENT pro tempore. On this vote, 34 Senators have voted in the affirmative, 63 Senators have voted in the negative. Therefore, Judge Nixon's motion to dismiss the impeachment article No. III is denied.

ARTICLE I

The PRESIDENT pro tempore.. The clerk will now read the first article of impeachment.

The assistant legislative clerk read as follows:

ARTICLE I

On July 18, 1984, Judge Nixon testified before a Federal grand jury empaneled in the United States District Court for the Southern District of Mississippi (Hattiesburg Division) to investigate Judge Nixon's business relationship with Wiley Fairchild and the handling of the criminal prosecution of Fairchild's son, Drew Fairchild, for drug smuggling. In the course of his grand jury testimony and having duly taken an oath that he would tell the truth, the whole truth, and nothing but the truth, Judge Nixon did knowingly and contrary to his oath make a material false or misleading statement to the grand jury.

The false or misleading statement was, in substance, that Forrest County District Attorney Paul Holmes never discussed the Drew Fairchild case with Judge Nixon.

Wherefore, Judge Walter L. Nixon, Jr., is guilty of an impeachable offense and should be removed from office.

VOTE ON ARTICLE I

The PRESIDENT pro tempore. On this vote, the yeas and nays are automatic.

The Chair reminds the Senate that in voting on articles of impeachment, each Senator, when his or her name is called, would stand in his or her place and vote guilty or not guilty.

Senators how say you, is the respondent, Walter L. Nixon, Jr., guilty or not guilty?

The clerk will call the roll.

Mr. CRANSTON. I announce that the Senator from Oklahoma [Mr. BOREN] and the Senator from New Jersey [Mr. Bradley] are necessarily absent.

I further announce that, if present and voting, the Senator from New Jersey [Mr. Bradley] would vote "guilty."

Mr. SIMPSON. I announce that the Senator from Arizona [Mr. McCain] is necessarily absent.

The PRESIDENT pro tempore. Have all Senators voted?

The result was announced—guilty 89, not guilty 8, as follows:

[Rollcall Vote No. 286]

(Subject: Article I—Court of Impeachment—Judge Walter L. Nixon)

YEAS—89

Adams	Burdick	DeConcini
Armstrong	Burns	Dixon
Baucus	Byrd	Dodd
Bentsen	Coats	Dole
Biden	Cochran	Domenici
Bingaman	Cohen	Durenberger
Bond	Conrad	Exon
Boschwitz	Cranston	Ford
Breaux	D'Amato	Fowler
Bryan	Danforth	Garn
Bumpers	Daschle	Glenn

Gore	Kerry	Pryor
Gorton	Kohl	Reid
Graham	Lautenberg	Riegle
Gramm	Leahy	Robb
Grassley	Levin	Rockefeller
Harkin	Lieberman	Roth
Hatch	Lott	Rudman
Heflin	Lugar	Sarbanes
Heinz	Matsunaga	Shelby
Helms	McConnell	Simon
Hollings	Metzenbaum	Simpson
Humphrey	Mikulski	Specter
Inouye	Mitchell	Stevens
Jeffords	Moynihan	Thurmond
Johnston	Murkowski	Wallop
Kassebaum	Nickles	Warner
Kasten	Nunn	Wilson
Kennedy	Packwood	Wirth
Kerrey	Pressler	

NAYS—8

Chafee	McClure	Sasser
Hatfield	Pell	Symms
Mack	Sanford	

ABSENT, NOT VOTING, OR EXCUSED FROM VOTING—3

Boren	Bradley	McCain

The PRESIDENT pro tempore. On the first article of impeachment, 89 Senators have voted guilty, 8 Senators have voted not guilty. Two-thirds of the Members present having voted guilty, the Senate accordingly adjudges that the respondent, Walter L. Nixon, Jr., is guilty as charged in this first article.

ARTICLE II

The PRESIDENT pro tempore. The clerk will now read the second article of impeachment.

The legislative clerk read as follows:

ARTICLE II

On July 18, 1984, Judge Nixon testified before a Federal grand jury empaneled in the United States District Court for the Southern District to Mississippi to investigate Judge Nixon's business relationship with Wiley Fairchild and the handling of the prosecution of Fairchild's son, Drew Fairchild, for drug smuggling. In the course of his grand jury testimony and having duly taken an oath that he would tell the truth, the whole truth, and nothing but the truth, Judge Nixon did knowingly and contrary to his oath make a material false or misleading statement to the grand jury.

The false or misleading statement was, in substance, that Judge Nixon had nothing whatsoever officially or unofficially to do with the Drew Fairchild case in Federal court or State court; and that Judge Nixon "never handled any part of it, never had a thing to do with it at all, and never talked to anyone, State or Federal prosecutor or judge, that in any way influenced anybody" with respect to the Drew Fairchild case.

Wherefore, Judge Walter L. Nixon, Jr., is guilty of an impeachable offense and should be removed from office.

VOTE ON ARTICLE II

The PRESIDENT pro tempore. Senators how say you? Is the respondent, Walter L. Nixon, Jr., guilty or not guilty?

The clerk will call the roll, and please repeat the responses.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Oklahoma [Mr. Boren] and the Senator from New Jersey [Mr. Bradley] are necessarily absent.

I further announce that, if present and voting, the Senator from New Jersey [Mr. Bradley] would vote "guilty."

Mr. SIMPSON. I announce that the Senator from Arizona [Mr. McCain] is necessarily absent.

The result was announced—guilty 78, not guilty 19, as follows:

[Rollcall Vote No. 287]

(Subject: Article II—Court of Impeachment—Judge Walter L. Nixon, Jr.)

GUILTY—78

Adams	D'Amato	Hatch
Baucus	Danforth	Heflin
Bentson	Daschle	Heinz
Biden	DeConcini	Helms
Bingaman	Dixon	Hollings
Bond	Dodd	Humphrey
Boschwitz	Exon	Inouye
Breaux	Ford	Johnston
Bryan	Fowler	Kassebaum
Bumpers	Garn	Kasten
Burdick	Glenn	Kennedy
Burns	Gore	Kerrey
Byrd	Gorton	Kerry
Coats	Graham	Kohl
Cohen	Gramm	Lautenberg
Conrad	Grassley	Leahy
Cranston	Harkin	Levin

Lieberman	Nunn	Sarbanes
Lugar	Pressler	Shelby
Matsunaga	Pryor	Simon
McConnell	Reid	Simpson
Metzenbaum	Riegle	Specter
Mikulski	Robb	Stevens
Mitchell	Rockefeller	Warner
Moynihan	Roth	Wilson
Nickles	Rudman	Wirth

NOT GUILTY—19

Armstrong	Jeffords	Sanford
Chafee	Lott	Sasser
Cochran	Mack	Symms
Dole	McClure	Thurmond
Domenici	Murkowski	Wallop
Durenberger	Packwood	
Hatfield	Pell	

ABSENT, NOT VOTING, OR EXCUSED FROM VOTING—3

Boren	Bradley	McCain

The PRESIDENT pro tempore. All Senators having voted, on the second article of impeachment, 78 Senators have voted guilty; 19 Senators have voted not guilty.

Two-thirds of the Members present having voted guilty, the Senate adjudges that the respondent, Walter L. Nixon, Jr., is guilty as charged in this article.

ARTICLE III

The PRESIDENT pro tempore. The clerk will now read the third article of impeachment.

The assistant legislative clerk read as follows:

ARTICLE III

By virtue of his office as a judge of the United States District Court for the Southern District of Mississippi, Judge Nixon is required to uphold the integrity of the judiciary, to avoid impropriety and the appearance of impropriety, and to obey the laws of the United States.

Judge Nixon has raised substantial doubt as to his judicial integrity, undermined confidence in the integrity and impartiality of the judiciary, betrayed the trust of the people of the United States, disobeyed the laws of the United States and brought disrepute on the Federal courts and the administration of justice by the Federal courts by the following:

After entering into an oil and gas investment with Wiley Fairchild, Judge Nixon conversed with Wiley Fairchild, Carroll Ingram, and Forrest County District Attorney Paul Holmes concerning the State criminal drug conspiracy prosecution of Drew Fairchild, the son of Wiley Fairchild, and thereafter concealed those conversations as follows:

(1) Judge Nixon concealed those conversations through one or more material false or misleading statements knowingly made to an attorney from the United States Department of Justice and a special agent of the Federal Bureau of Investigation during an interview of Judge Nixon conducted in Biloxi, Mississippi, on April 19, 1984. The substance of the false or misleading statements included the following:

(A) Judge Nixon never discussed with Wiley Fairchild anything about Wiley's son's case.

(B) Wiley Fairchild never brought up his son's case.

(C) At the time of the interview Judge Nixon had no knowledge of the Drew Fairchild case and did not even know Drew Fairchild existed, except for what the judge previously read in the newspaper and what he learned from the questioners in the interview.

(D) Nothing was done or nothing was ever mentioned about Wiley Fairchild's son.

(E) Judge Nixon had never heard about the Drew Fairchild case, except what he told the questioners in the interview, and certainly had nothing to do with the case.

(F) Judge Nixon had done nothing to influence the Drew Fairchild case.

(G) State prosecutor Paul Holmes never talked to Judge Nixon about the Drew Fairchild case.

(2) Judge Nixon further concealed his conversations with Wiley Fairchild, Paul Holmes, and Carroll Ingram concerning the Drew Fairchild case by knowingly giving one or more material false or misleading statements to a Federal grand jury during testimony under oath in Hattiesburg, Mississippi, on July 18, 1984. The substance of the false or misleading statements included the following:

(A) Paul Holmes never discussed the Drew Fairchild case with Judge Nixon.

(B) To the best of his knowledge and recollection, Judge Nixon did not know of any reason he would have met with Wiley Fairchild after the Nixon-Fairchild oil and gas investment was finalized in February 1981.

(C) Judge Nixon gave the grand jury all the information that he had and that he could and had withheld nothing during his grand jury testimony.

(D) Judge Nixon had nothing whatsoever unofficially to do with the Drew Fairchild criminal case in State court.

(E) Judge Nixon never talked to anyone, including the State prosecutor, about the Drew Fairchild case.

(F) Judge Nixon never had a thing to do with the Drew Fairchild case at all.

(G) Judge Nixon "never talked to anyone, State or Federal, prosecutor or judge, in any way influence anybody" with respect to the Drew Fairchild case.

Wherefore, Judge Walter L. Nixon, Jr., is guilty of an impeachable offense and should be removed from office.

VOTE ON ARTICLE III

The PRESIDENT pro tempore. Senators, how say you? Is the respondent, Walter L. Nixon, Jr., guilty or not guilty?

The clerk will call the roll on the third article of impeachment, and please repeat the responses.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Oklahoma [Mr. Boren] and the Senator from New Jersey [Mr. Bradley] are necessarily absent.

I further announce that, if present and voting, the Senator from New Jersey [Mr. Bradley] would vote "guilty."

Mr. SIMPSON. I announce that the Senator from Arizona [Mr. McCain] is necessarily absent.

The result was announced—guilty 57, not guilty 40, as follows:

[Rollcall Vote No. 288]

(Subject: Article III—Court of Impeachment—Walter L. Nixon, Jr.)

GUILTY—57

Armstrong	Glenn	Mikulski
Bentsen	Gore	Mitchell
Bond	Gorton	Nickles
Boschwitz	Gramm	Pell
Breaux	Grassley	Pressler
Bumpers	Heinz	Riegle
Byrd	Helms	Robb
Coats	Hollings	Rockefeller
Cochran	Humphrey	Roth
Cohen	Inouye	Rudman
D'Amato	Jeffords	Sarbanes
Danforth	Kassebaum	Shelby
Daschle	Kennedy	Simpson
DeConcini	Lautenberg	Specter
Dodd	Leahy	Stevens
Durenberger	Lott	Thurmond
Ford	Lugar	Warner
Fowler	Matsunaga	Wilson
Garn	McConnell	Wirth

NOT GUILTY—40

Adams	Chafee	Graham
Baucus	Conrad	Harkin
Biden	Cranston	Hatch
Bingaman	Dixon	Hatfield
Bryan	Dole	Heflin
Burdick	Domenici	Johnston
Burns	Exon	Kasten

Kerrey	Metzenbaum	Sanford
Kerry	Moynihan	Sasser
Kohl	Murkowski	Simon
Levin	Nunn	Symms
Lieberman	Packwood	Wallop
Mack	Pryor	
McClure	Reid	

ABSENT, NOT VOTING, OR EXCUSED FROM VOTING—3

Boren	Bradley	McCain

The PRESIDENT pro tempore. Have all Senators in the Chamber voted?

Upon this article of impeachment, 57 Senators having voted guilty, 40 Senators having voted not guilty, less than two-thirds of the Members present having voted guilty, the Senate adjudges that the respondent, Walter L. Nixon, Jr., is not guilty as charged in the third article of impeachment.

The Chair directs judgment to be entered in accordance with the vote of the Senate, as follows:

The Senate, having tried Walter L. Nixon, Jr., U.S. district judge for the Southern District of Mississippi, upon three articles of impeachment exhibited against him by the House of Representatives, and two-thirds of the Senators present having found him guilty of the charges contained in articles I and II of the articles of impeachment, it is, therefore, ordered and adjudged that the said Walter L. Nixon, Jr., be, and he is hereby, removed from office.

The majority leader is recognized.

Mr. MITCHELL. Mr. President, I send to the desk an order.

The PRESIDING pro tempore. The clerk will report the order.

The legislative clerk read as follows:

Ordered, That the Secretary be directed to communicate to the Secretary of State, as provided by rule XXIII of Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials, and also to the House of Representatives the judgment of the Senate in the case of Walter L. Nixon, Jr., and transmit a certified copy of the judgment to each.

The PRESIDENT pro tempore. Without objection, the order will be entered and adjudged.

In the Senate of the United States,

November 3 (legislative day, September 18), 1989

JUDGMENT

The Senate having tried Walter L. Nixon, Jr., United States District Judge for the Southern District of Mississippi, upon three Articles of Impeachment exhibited against him by the House of Representatives, and two-thirds of the Senators present having found him guilty of the Charges contained in Articles I and II of the Articles of Impeachment: it is therefore,

Ordered and adjudged, That the said Walter L. Nixon, Jr. be, and he is hereby, removed from office.

Attest:

Secretary.

By: _____
Assistant Secretary

In the Senate of the United States,

November 3 (legislative day, September 18), 1989

Ordered, That the Secretary be directed to communicate to the Secretary of State, as provided by Rule XXIII of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials, and also to the House of Representatives the judgment of the Senate in the case of Walter L. Nixon, Jr., and transmit a certified copy of the judgment to each.

Attest:

Secretary.

By: _____
Assistant Secretary